UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WILMINGTON SAVINGS FUND SOCIETY, FSB, D/B/A CHRISTIANA TRUST, NOT INDIVIDUALLY BUT AS TRUSTEE FOR CARLSBAD FUNDING MORTGAGE TRUST, Plaintiff, -against- ANASTASIA BELCHOU; LOUIS C. BELCHOU; "JOHN DOE #1" through "JOHN DOE #10" inclusive the names of the ten last name Defendants being fictitious, real names unknown to the Plaintiff, the parties intended being persons or corporations having an interest in, or tenants or persons in possession of, portions of the mortgaged premises described in the Complaint, Defendants.	Index No.:__________ COMPLAINT

Plaintiff, Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not individually but as trustee for Carlsbad Funding Mortgage Trust ("Plaintiff"), by and through its attorneys, Knuckles, Komosinski & Manfro, LLP, for its complaint herein, alleges upon information and belief as follows:

INTRODUCTION

1. This is an action brought pursuant to New York Real Property Actions and Proceeds Law (RPAPL) Article 13 to foreclose a mortgage on the real property located at 259 Rich Avenue, Mount Vernon, New York 10552.

STATEMENT OF JURISDICTION

2. Federal subject matter exists pursuant to 28 U.S.C. § 1332 because complete diversity exists among the Defendants and the amount in controversy, without interest and costs, exceeds $75,000.00.

VENUE

3. Venue is proper pursuant to 28 U.S.C. § 1391, that the Premises is located in the Southern District Court of New York.

PARTIES

4. Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not individually but as trustee for Carlsbad Funding Mortgage Trust is a federal banking association having its principal place of business at 500 Delaware Avenue, Wilmington, DE 19801.

5. Defendant, Anastasia Belchou is an individual residing at 259 Rich Avenue, Mount Vernon, New York 10552 (the "Premises"). Anastasia Belchou is the prior owner and original mortgagor of the Premises.

6. Defendant, Louis C. Belchou is an individual residing at 259 Rich Avenue, Mount Vernon, New York 10552 (the "Premises"). Louis C. Belchou is the owner and mortgagor of the Premises.

FACTUAL BACKGROUND AND CLAIM FOR RELIEF

7. (a) That upon information and belief and on April 25, 1990, Decedent Christian Belchou and Defendant Anastasia Belchou duly executed, acknowledged, and delivered to Plaintiff's assignor an evidence of obligation wherein and whereby the Decedent Christian Belchou and Defendant Anastasia Belchou acknowledged to be indebted to the Plaintiff's assignor for the amount of $175,000.00 plus interest thereon to be paid according to its terms (Exhibit "A")

(b) That upon information and belief and on May 9, 1991, Decedent Christian Belchou and Defendant Anastasia Belchou duly executed, acknowledged, and delivered to Plaintiff's assignor an evidence of obligation wherein and whereby the Decedent Christian Belchou and Defendant Anastasia Belchou acknowledged to be indebted to the Plaintiff's assignor for the amount of $28,500.00 plus interest thereon to be paid according to its terms (Exhibit "A")

(c) That upon information and belief and on December 12, 2000, Decedent Christian Belchou and Defendant Anastasia Belchou duly executed, acknowledged, and delivered to Plaintiff's assignor an evidence of obligation wherein and whereby the Decedent Christian Belchou and Defendant Anastasia Belchou acknowledged to be indebted to the Plaintiff's assignor for the amount of $54,448.06 plus interest thereon to be paid according to its terms (Exhibit "A").

(d) That on December 12, 2000, Decedent Christian Belchou and Defendants Anastasia Belchou and Louis C. Belchou duly executed, acknowledged, and delivered to Plaintiff an evidence of obligation wherein and whereby the Defendants Christian Belchou (deceased), Anastasia Belchou and Louis C. Belchou acknowledged to be indebted to the Plaintiff for the consolidated amount of $210,000.00 plus interest thereon to be paid according to its terms (Exhibit "A").

8. (a) That as collateral security for the payment of the initial obligation in paragraph SEVENTH (a) above sum, including interest, the Decedent Christian Belchou and Defendant Anastasia Belchou on the same day duly executed, acknowledged and delivered a mortgage to the mortgagee named therein (Exhibit "B").

(b) That as collateral security for the payment of the initial obligation in paragraph SEVENTH (b) above sum, including interest, the Decedent Christian Belchou and Defendant Anastasia Belchou on the same day duly executed, acknowledged and delivered a mortgage to the mortgagee named therein (Exhibit "B").

(c) That as collateral security for the payment of the initial obligation in paragraph SEVENTH (c) above sum, including interest, the Decedent Christian Belchou and Defendant Anastasia Belchou on the same day duly executed, acknowledged and delivered a mortgage to the mortgagee named therein (Exhibit "B").

(d) That as collateral security for the payment of the initial obligation in paragraph SEVENTH (d) above sum, including interest, the Decedent Christian Belchou and Defendants Anastasia Belchou and Louis C. Belchou on the same day duly executed, acknowledged and delivered a consolidation, extension and modification agreement to the mortgagee named therein (Exhibit "B").

9. That on or about October 11, 2002, Decedent Christian Belchou and Defendant Anastasia Belchou duly executed, acknowledged, and delivered to a mortgage modification and extension agreement to the mortgagee named therein which among other things, modified the principal balance, interest rate and monthly payment of the original indebtedness (Exhibit "C").

10. That said evidence of obligations and mortgages as consolidated and modified or either of them provide that in the event of a default in the payment of said principal or interest, or any part thereof, or by reason of any default that is more particularly set forth in said evidence of obligations or mortgages as consolidated and modified the holder thereof is empowered to sell the mortgaged premises according to law.

11. (a) That the mortgage in paragraph SEVENTH (a) was duly recorded in the Office of the County Clerk/City Register of the County of Westchester on May 8, 1990 in Liber 13887 at Page 65 and the mortgage tax thereon was duly paid.

(b) That the mortgage in paragraph SEVENTH (b) was duly recorded in the Office of the County Clerk/City Register of the County of Westchester on May 16, 1991 in Liber 14551 at Page 164 and the mortgage tax thereon was duly paid.

(c) That the mortgage in paragraph SEVENTH (b) was duly recorded in the Office of the County Clerk/City Register of the County of Westchester on February 2, 2001 as Control Number: 410230594 and the mortgage tax thereon was duly paid.

(d) That the consolidation, extension and modification agreement in paragraph EIGHTH (c) was duly recorded in the Office of the County Clerk/City Register of the County of Westchester on February 2, 2001 as Control Number: 410230609, and the mortgage tax thereon was duly paid.

(e) That the loan modification and extension agreement was duly recorded in the Office of the County Clerk/City Register of the County of Westchester on December 4, 2002 as Control Number: 423220774 and the mortgage tax thereon was duly paid.

(f) That notes and mortgages as consolidated and modified were ultimately assigned to the Plaintiff herein as evidenced by the indorsement affixed to the note and later evidenced by written instrument dated June 21, 2016 and recorded as Control Number: 562943572 in the office of the County Clerk/City Register of Westchester County on October 21, 2016 (Exhibits "A" and "D").

12. That in and by the above described evidence of obligation, guarantee, or the notes secured thereby and the mortgages as consolidated and modified, it was covenanted and agreed, among other things, that in the event any default was made in the monthly payment of $1,202.16 (inclusive of principal and interest) as consolidated and modified the Holder, at its option might declare the entire principal sum due and payable.

13. That the Decedent Christian Belchou and Defendant Anastasia Belchou pursuant to the terms of the evidence of obligation, guarantee, or the note secured thereby have defaulted in making the aforesaid monthly payments for a period exceeding thirty (30) days. More precisely, the Decedent Christian Belchou and Defendant Anastasia Belchou have defaulted in making the monthly payment due on April 1, 2013 and monthly thereafter.

14. That on or about December 2, 2016, notice of the default pursuant the mortgages as consolidated and modified were mailed via first class mail to the Defendants Anastasia Belchou and Louis C. Belchou and upon information and belief, received by the Defendants Anastasia Belchou and Louis C. Belchou at 259 Rich Avenue, Mount Vernon, New York 10552 which is the premises which is the subject of the action (Exhibit "E").

15. That on or about September 29, 2016 notices pursuant to RPAPL §1304 were mailed via certified and first class mail in an envelope separate from any other mailing or notice to the Defendants Anastasia Belchou and Louis C. Belchou and upon information and belief, received by the Defendants Anastasia Belchou and Louis C. Belchou at 259 Rich Avenue, Mount Vernon, New York 10552 which is the premises which is the subject of the action (Exhibit "E").

16. That by reason of the default of the Decedent Christian Belchou and Defendant Anastasia Belchou and pursuant to the acceleration provisions of said notes and mortgages as consolidated and modified, the Plaintiff has elected and does elect that the whole of the principal sum secured hereby become immediately due and payable and there is now justly due and payable to the Plaintiff by virtue of such acceleration, the principal sum of $169,689.78 plus interest at the contract rate from March 1, 2013.

17. That no other action has been had for the recovery of the said sum secured by the said notes and mortgages as consolidated and modified or any part thereof.

18. That all paragraphs as contained in the mortgages as consolidated and modified are incorporated herein by reference as Exhibit "B".

19. That the Plaintiff is the owner and/or holder of the subject mortgage and note or has been delegated the authority to institute a mortgage foreclosure action by the owner and/or holder of the subject mortgage, and if applicable, the Plaintiff and/or its assignor as originator of the subject loan have complied with all of the provisions of section five hundred ninety-five-a of the banking law and any rules and regulations promulgated thereunder, section six-l of the banking law and section thirteen hundred four of Article Thirteen of the Real Property Actions and Proceedings Law.

20. That the Plaintiff shall not be deemed to have waived, altered, released or changed the election hereinbefore made by reason of the payment after the date of the commencement of this action of all or any part of the arrears due and owing or the curing of any or all of the defaults mentioned herein, and such election shall continue

and remain effective until all the costs and disbursements of this action, and any and all future defaults under the aforesaid notes and mortgages as consolidated and modified occurring prior to the discontinuance of this action, are fully paid or cured.

21. That in order to protect its security, the Plaintiff may be compelled, during the pendency of this action, to pay taxes, water rates, fire insurance premiums and other charges affecting the said mortgaged premises, and the Plaintiff requests that any sums so paid be added to the amount due to the Plaintiff upon the said notes and mortgages as consolidated and modified and be deemed secured thereby.

22. That the premises are or may be subject to covenants, restrictions, easements and agreements of record, if any; to any state of facts an accurate survey may show to financing statements of record; to existing prior mortgages and liens, if any; to existing tenancies and/or occupancies, if any; to violations in any state or municipal department, if any; to the statutory right of the United States of America to redeem, if any; and the Plaintiff requests that the premises be sold subject thereto.

23. That the Defendant Louis C. Belchou is made a party to this action by virtue of a mortgage dated March 8, 2013 given by Louis C. Belchou to Anastasia Belchou in the amount of $250,000.00 and recorded with the County Clerk/City Register of Westchester County on March 14, 2013 as Control Number: 530653335 and which mortgage, if a lien against the property, is subject and subordinate to the lien of the Plaintiff's mortgages as consolidated and modified.

24. The pursuant to the provisions of the Civil Practice Law and Rules 3012-b(a) of the State of New York, an executed copy of the original certificate of merit filed simultaneously with the summons and complaint is attached hereto (Exhibit "F").

25. That upon information and belief, this action involves a residential, one-to-four family, owner occupied property and if applicable, the Plaintiff and/or its assignors has fully complied with the requirements of RPAPL § 1304 and RPAPL § 1306 (Exhibit "E").

AS AND FOR A SECOND CAUSE OF ACTION

26. That the Plaintiff repeats and realleges all the above paragraphs numbered 1 through 25.

27. That this action is brought in part pursuant to Article 15 of the Real Property Actions and Proceedings Law.

28. That upon information and belief, none of the parties to this action is an infant, mentally retarded, mentally ill or an alcohol abuser.

29. That the judgment in this action will not affect a person not in being or ascertained at the commencement of this action, who by a contingency contained in a devise or grant or otherwise, could afterward become entitled to a beneficial estate or interest in the property herein involved, and that every person or interest in being who would have been entitled to such estate or interest if such event had happened immediately before the commencement of this action, is made a party hereto.

30. That no personal claim is made against the defendants herein under the Second Cause of Action unless said defendants shall assert a claim adverse to the claim of the Plaintiff as set forth in the Complaint herein.

31. That on or about April 25, 1990, a satisfaction and discharge date November 23, 2002 of the mortgage set forth in Paragraph 8 (a) above was erroneously issued and recorded in the office of the County Clerk/City Register of Westchester on January 31, 2003 as Control Number: 430180318 (Exhibit "G").

32. That said satisfaction of mortgage was prepared and executed wholly in error by the Plaintiff and in actuality the consolidated and modified mortgages obligation has never been satisfied and remains unsatisfied.

33. That the satisfaction of mortgage should be deemed and declared ineffective, null and void, cancelled, rescinded and removed of record and the mortgage restored as a valid lien on the real property known as and by the street address 259 Rich Avenue, Mount Vernon, New York 10552.

WHEREFORE, the Plaintiff demands judgment as follows:

a) Defendants herein and all persons claiming under them or any or either of them, subsequent to the commencement of this action, may be forever barred and foreclosed of all right, claim, lien and equity of redemption in the said mortgaged premises

b) A Referee be appointed to sell the Premises at auction to the highest bidder

c) That the said premises be decreed to be sold according to law subject to the provisions contained in Paragraph TWENTY-SECOND herein and that the monies arising from the sale may be brought into Court and that the Plaintiff may be paid the amount due on the said notes and mortgages as consolidated and modified with interest to the time of such payment, together with expenses of sale, attorney's fees, and the costs, allowances, disbursements and additional allowances granted herein, so far as the amount of such monies properly applicable thereto will pay the same

d) Defendant Anastasia Belchou may be adjudged to pay the whole residue, or so much thereof as the Court may determine to be just and equitable, of the debt remaining unsatisfied after the sale of the mortgaged premises and the application of the proceeds pursuant to the provisions contained in such Judgment, the amount thereof to be determined by the Court as provided in Section 1371 of the Real Property Actions and Proceedings Law

e) On the Second Cause of Action for declaring the satisfaction of the mortgage dated November 23, 2002 and recorded in the office of the Westchester County Clerk as Control Number: 430180318 on January 31, 2003 void and of no effect, cancelled, rescinded and removed of record and directing the Westchester County Clerk to mark the records accordingly and restore the mortgage as a valid lien on the real property known as and by the street address 259 Rich Avenue, Mount Vernon, New York 10552; and

f) That the Court award such further and different relief as it deems just, equitable and proper.

Dated: Elmsford, New York
March 20, 2017

KNUCKLES, KOMOSINSKI & MANFRO, LLP
Attorneys for Plaintiff

By: ______________________________
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